

EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

COPART INC.,

Plaintiff,

vs.

No. C 07 02684 CW

CRUM & FORSTER INDEMNITY
COMPANY, UNITED STATES FIRE
INSURANCE COMPANY, and DOES
1-10,

Defendants.

CERTIFIED
COPY

AND RELATED COUNTERCLAIMS.

VIDEOTAPED DEPOSITION OF SIMON ROTE

San Francisco, California

Thursday, May 8, 2008

Reported by:

DARCY J. BROKAW

RPR, CRR, CLR, CSR No. 12584

Job No. 86978

10:20 1 BY MR. RUBY:

2 Q Besides the U.S. Fire quote for the 2003
3 policy, do you remember if Copart got -- through
4 Marsh, got any other quotes from other carriers for
10:20 5 the property insurance program?

6 A I'm sure they did.

7 Q Was it Copart's instructions to Marsh to
8 go to the market and try to get more than one quote?

9 A We would have had a strategy meeting
10:20 10 typically with Marsh and just to discuss what the --
11 I guess how they would, I guess, market our
12 coverages. So, you know, we would take
13 recommendations from them, what they've seen in the
14 market. I mean, obviously Marsh is -- we relied
10:21 15 upon their professional experience.

16 Q Do you remember why in 2003 Copart decided
17 to go with U.S. Fire for its property insurance
18 policy that year?

19 A Not off the top -- I don't recall.

10:21 20 Q In the prior year, the underwriter had
21 been Royal?

22 A I believe that's correct, for property.

23 Q For property.

24 And during your tenure with Copart, since
10:21 25 '97, had Copart's property insurance been with

10:23 1 potentially a legal conclusion.

2 But go ahead.

3 THE WITNESS: The relationship with Marsh,
4 I mean, we hired them as our consultants, okay.

10:24 5 They were -- we relied upon them to, you know, go
6 out and market our insurance program.

7 BY MR. RUBY:

8 Q Now, I'll try my other question and maybe
9 try it a little differently. I don't know if I can
10:24 10 do it, but anyway -- all right.

11 So Copart had a relationship with Marsh,
12 right?

13 A Yes.

14 Q And then Copart understood that Marsh
10:24 15 would go out, talk to various insurers about
16 Copart's insurance needs, right?

17 A Correct.

18 Q And Marsh would ask certain insurers to
19 provide quotes for premiums and other terms for the
10:24 20 account, right?

21 A Yes.

22 Q And then Marsh would collect the quotes
23 that came back and would present those to Copart
24 with its recommendations, right?

10:24 25 A Yes.

11:05 1 the contents were.

2 Q Now, let's say with respect to computer
3 equipment, was there any work that you did on the
4 values for that description?

11:05 5 A At that point in time, we also -- for the
6 new locations, we would use the -- obviously, when
7 we were purchasing locations, for new locations, we
8 were procuring the computer equipment for it. We
9 had a fairly good idea of what a package of computer
11:05 10 equipment would cost per location, and we used that
11 value.

12 Q Okay. Now, in the previous year, we saw
13 that the statement had two separate columns relating
14 to buildings. One said "Building" and one said
11:05 15 "Building Improvements."

16 Now we're seeing in 2004 one column that
17 says "Building and Improvements." Do you see that?

18 A Yes.

19 Q Do you have any understanding as to why
11:06 20 those columns got -- I don't know if they were
21 combined -- but why we're down to one column now in
22 2004?

23 A Because if I recall in looking at it,
24 there was some confusion as to what is a building
11:06 25 and improvement.

11:06 1 So the reality is there's buildings, and
2 regardless of what you do to the shell of that
3 building, you do some -- you construct offices
4 inside of it -- it's building and improvements; it's
11:06 5 one category.

6 Q So no reason to distinguish? A building's
7 a building?

8 A Correct.

9 Q Now, given that a column had been
11:06 10 eliminated and previously there had been data in
11 both columns, what, if anything, was done to combine
12 the data in those columns into the one column that
13 we see in the '04 statement?

14 A The prior data is not relevant here,
11:06 15 because basically at this point in time, we're
16 reviewing the schedule again, trying to determine
17 what we estimate the value to be at that point in
18 time. So we had to take into consideration what
19 would have been done to the building, and these are
11:07 20 basically our best estimate of what the value is.

21 Q Was it the case, then, in '04 that you
22 took a fresh look at the building values and instead
23 of just trying to combine the previous information,
24 you just again took a fresh look at what you were
11:07 25 going to report in this column?

11:07 1 A I mean, I think it's apparent in this we
2 did -- you know, went through it, tried to update it
3 to the values at that point in time. And across the
4 board, like I said, the contents, the computer
11:07 5 equipment. So we tried to do a thorough -- thorough
6 job to update the schedule.

7 Q Was there any use of the previous year's
8 data and, again, the two different numbers as a
9 baseline for what was reported here?

11:08 10 A No.

11 Q Okay. Now, in taking that fresh look at
12 the building values, how did you go about
13 determining what values to put in that column?

14 A This is where we would rely upon our CEO
11:08 15 and his experience. Obviously, we started with one
16 location, and you can see at this point in time --
17 how many do we have -- we would have over 100
18 locations at this time.

19 So they're familiar with this
11:08 20 particular -- you know, the salvage facilities, the
21 facilities that Copart utilizes to operate. We've
22 built a number of buildings over the years, have a,
23 you know, good understanding of what the cost is to
24 construct it. So based upon his knowledge, he would
11:09 25 come up with the estimated value.

11:09 1 And you've got to take into consideration
2 the age of the building, the construction type. So
3 he was the person with that type of knowledge.

4 Q In July of '04, who was the CEO, again?

11:09 5 A The CEO?

6 Q Yes.

7 A Willis Johnson. There's been no change in
8 the CEO.

9 Q Okay. Still Mr. Johnson?

11:09 10 A Correct.

11 Q So if I understand, although you have some
12 knowledge of what went into this, it was Mr. Johnson
13 who actually determined the numbers that went into
14 the building column on this statement?

11:09 15 A Yes.

16 Q Okay. Then with respect to business
17 interruption and extra expense, did you have any
18 involvement in the numbers that went into that
19 column?

11:09 20 A I'm trying to recall. Obviously, I think
21 from the prior year, like I was saying, there was
22 not a lot of -- I don't think anybody really
23 remembered how it was calculated. So this year was
24 more of a consistent -- we applied a \$50,000 amount
11:10 25 per location.

11:31 1 the location wasn't complete.

2 So we didn't have an estimate -- we
3 basically -- we'd typically wait until the project
4 was completed to provide an estimate of the value.

11:31 5 Q Okay. So it's your understanding that in
6 July '04, even though Yard 105 is now being listed
7 as a location, that it was not perhaps fully
8 operational; is that --

9 A Correct.

11:31 10 Q Okay. And that there was some ongoing or
11 at least anticipated construction to be done there?

12 A Yes.

13 Q Okay. But we've seen from the master
14 asset list that even when part of what became

11:32 15 Yard 105 was acquired in '02, there was already a
16 building there, right?

17 A Yes.

18 Q From the list?

19 A Yes.

11:32 20 Q And on the list, there was an acquisition
21 cost of 400,000 associated with that building,
22 right?

23 A There was, correct.

24 Q So why not in this July '04 statement,
11:32 25 even though there may be more construction coming

11:32 1 down the pike, why not at least put 400,000 or some
2 other value in the building column?

3 A Well, first, obviously book value doesn't
4 necessarily approximate the fair value or the
11:32 5 replacement value, first off.

6 And second, historically, our practice was
7 to wait until the project was completed, and upon
8 completion, provide an updated value. And that's
9 what we have always done.

11:32 10 Q Okay. With respect to the other columns,
11 then, for contents, computer equipment, business
12 interruption and inventory, which are also blank,
13 again maybe it's the same answer, but can you tell
14 me why those are blank?

11:33 15 A My understanding is, obviously, if we
16 didn't have the building completed, we wouldn't have
17 put in the cubicles and you wouldn't have put in the
18 computer equipment.

19 Q Okay. So there were no contents there, so
11:33 20 that's why there's no number there, right?

21 A Correct.

22 Q And similarly, if you're not doing
23 business there, there's no business interruption
24 exposure there, right?

11:34 25 A Correct.

01:36 1 address has changed for the location, it's also
2 notifying the company of some values, right?

3 A For the stock values, yes, as well as on
4 those two locations, they've added property values.

01:36 5 Q Okay. And again, my question is: Can you
6 give any explanation as to why at this point in
7 time, the only value that's being reported for
8 Yard 105 is an inventory value --

9 A Right.

01:36 10 Q -- and not also a building value, as we
11 see with Elgin and Reno?

12 A To me, my understanding, the buildings
13 probably were not complete. And typically, until it
14 was completed, we wouldn't assign the value to it.
01:36 15 However, it wasn't a requirement for insurance. The
16 insurance, we're basically notifying them of the
17 properties and the locations, and we provided the
18 insurance company with the address.

19 MR. RUBY: I'm going to move to strike the
01:37 20 part about what's required or not required.

21 BY MR. RUBY:

22 Q If Yard 105 was not yet operational at
23 this time, why even report an inventory value then?

24 A Because there were probably physically
01:37 25 cars there; but when we say complete with the

01:37 1 construction, you can still have a punch list of
2 items that need to be completed, and the project
3 hasn't been completed and capitalized.

4 MR. RUBY: Okay. Exhibit 13.

01:38 5 (Defendant's Exhibit 13 marked
6 for identification)

7 BY MR. RUBY:

8 Q This takes us back in time a little bit,
9 and it maybe fills in some of the blanks.

01:38 10 This is a June 23rd, 2005 letter from
11 Ms. McIntyre to Mr. Rote, regarding insurance
12 renewals, October 1, 2005.

13 And she begins by saying: "Dear Simon:
14 In order for us to proceed" with "our renewal
01:38 15 activity with the underwriters, we will need the
16 following updated exposure information." And the
17 second cluster of bullet points is her request for a
18 location schedule and property Statement of Values.

19 And if we match this up with some of the
01:39 20 other correspondence we've looked at, would this
21 reinforce your recollection that these discussions
22 we've been seeing about values were in connection
23 with the renewal?

24 A It could have either been with the renewal
01:39 25 or just completing the prior year renewal, it seems

01:37 1 construction, you can still have a punch list of
2 items that need to be completed, and the project
3 hasn't been completed and capitalized.

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01:39 20 other correspondence we've looked at, would this
21 reinforce your recollection that these discussions
22 we've been seeing about values were in connection
23 with the renewal?

24 A It could have either been with the renewal
01:39 25 or just completing the prior year renewal, it seems

01:39 1 like.

2 Q That was kind of where I was going with my
3 original line of questions, and actually the reason
4 why I kept this separate was I wasn't sure if the
01:39 5 business with the new inventory was just something
6 that came up in the course of maintaining the old
7 policy as opposed to something in preparation for
8 the new policy. It doesn't make a whole lot of
9 difference.

01:39 10 But do you remember now either way whether
11 it was -- which way it was?

12 A No, I don't.

13 Q Okay. So she asks for some information;
14 she encloses the expiring policy Statement of
01:40 15 Values, which is dated -- this is the one we looked
16 at before -- September 1st, 2004.

17 So now we're in 2005. I know you're not
18 the CFO anymore, but are you -- you're still
19 involved with the 2005 renewal process?

01:40 20 A Yes.

21 Q And were you involved in responding to her
22 request here for a current complete listing of all
23 locations?

24 A Yes.

01:40 25 Q And she asks: "For each insured location,

01:56 1 Q Going to the e-mail, Ms. McIntyre was
2 enlisting his assistance in the marketing process
3 for competitive renewal quotes. And she attaches
4 something called a property Statement of Values,
01:57 5 August 8th, '05.

6 And if we go to the statement that follows
7 here, you'll see that with Yard 105, we're down to
8 one line now. This is another statement, still
9 dated August 8, '05, but different from the last one
01:57 10 because it's down to one line.

11 Well, I was going to ask you why, but you
12 answered that question already.

13 MR. RUBY: So let's move to what will be
14 Exhibit 18.

01:57 15 (Defendant's Exhibit 18 marked
16 for identification)

17 BY MR. RUBY:

18 Q Okay. Exhibit 18 starts with an e-mail
19 from this John Wood to the underwriter, Monica
01:58 20 Streacker. It says: "Attached our renewal
21 specifications," and it includes a property
22 Statement of Values dated August 8th, 2005. And the
23 attached statement, which was from the underwriter's
24 file, it looks like the last one, and for Yard 105,
01:58 25 we have this -- again, just this one line.

01:58 1 Do you see that?

2 A I'm sorry, I'm still reading the e-mail.

3 Q Okay. If you go through the statement to

4 Yard 105 --

01:59 5 A Okay.

6 Q Okay. We're down to one -- again, we're

7 down to one line now for Yard 105.

8 A All right.

9 Q And the only column that has any numbers
01:59 10 in it is -- or numbers or columns are the inventory
11 columns. So we still have blanks under Building and
12 Improvements, Contents, et cetera.

13 Do you see that?

14 A Yes.

01:59 15 MR. LARSON: Let me just object to that
16 characterization. There's also a number for
17 "Location Total Values."

18 MR. RUBY: Right. Which is the same as
19 the inventory exposure.

01:59 20 MR. LARSON: It's the same number.

21 MR. RUBY: Okay.

22 BY MR. RUBY:

23 Q The question, Mr. Rote, is: Up -- and
24 this is being forwarded to the underwriter on
01:59 25 August 24th.

01:59 1

A Mm-hmm.

2

Q Up through August 24th, had you provided

3

any updated Statement of Values to Marsh?

4

A I don't know the time frame when we

02:00 5

provided it to him. You can see in the previous

6

one, we were providing it to him in -- was it July?

7

Q Yeah. And what I meant by that was

8

anything new. We'll just complete the chain here.

9

So we've looked at Exhibit 14, which is a

02:00 10

July 31st, 2005 statement.

11

A Right.

12

Q We're not sure who that went to or from,

13

but it was different from the last statement. We've

14

seen an August 8th statement --

02:00 15

A But the only change that we did, we lost

16

one -- 105 went from two lines to one line. It's

17

still listing the location there for Yard 105.

18

Q Right. What I'm -- again, when I ask

19

these questions, I don't know if you know the

02:00 20

answer. I don't know if there is an answer. But I

21

just have to ask, just to make sure that we're not

22

missing something.

23

And so other than the Statement of Values

24

that we've looked at so far, are you aware of any

02:01 25

other Statement of Values that was sent to or from

02:01 1 Marsh, either from Copart to Marsh or Marsh to
2 Copart, through August 24th, other than the ones
3 we've looked at already?

4 A No, not off the top of my head.

02:01 5 Q Now, as of August 24th, 2005, what was
6 your understanding as to the status of operations or
7 nonoperations at Yard 105?

8 A I didn't realize it was complete. Or
9 actually, no, I don't think it was completed;
02:01 10 because I would have capitalized the project, and it
11 hadn't been capitalized.

12 Q I think I know what you mean by
13 "capitalized," but I'm not an accountant. Can you
14 explain what you mean by that?

02:02 15 A So if we're building a new location or,
16 doing construction on a location, all the costs
17 associated with that particular project go into our
18 construction-in-progress account. When the project
19 is completed, we take and transfer that out of the
02:02 20 construction-in-progress account and move it over to
21 the fixed asset accounts. We're now using that
22 asset, and we begin depreciating that asset.

23 From my recollection of the records, we
24 had not completed that process, because there was
02:02 25 still some ongoing work there.

02:31 1 A At first, yes.

2 Q Okay.

3 A I thought Patrice sent this in, so -- or
4 not Patrice, but Shari Meyers.

02:31 5 Q Okay. So now you said at first you were
6 the contact person. Did that change at some point?

7 A Well, obviously, for the adjuster to deal
8 with, they needed a local contact. So they had to
9 deal with the general manager, and then also with
02:32 10 our property manager, our national property manager,
11 Mike Carson.

12 MR. RUBY: Okay. This will be 24.

13 (Defendant's Exhibit 24 marked
14 for identification)

02:32 15 BY MR. RUBY:

16 Q Okay. Exhibit 24 is from the Copart
17 production. As printed, it's an e-mail chain. And
18 the lower e-mail is November 1st, 2005, from
19 Mr. Rote to Ms. McIntyre.

02:33 20 And why don't you just take a look at it,
21 and then I'm just going to ask you some questions
22 about it.

23 MR. LARSON: Let me -- just in accordance
24 with our stipulation about authenticity, there is a
02:33 25 handwritten notation on page Copart 00023 that's not

02:33 1 an original. So I don't believe that is part of the
2 authentic document.

3 MR. RUBY: Oh, okay.

4 MR. LARSON: Where it says "really
02:33 5 11/1/05," I don't believe that's on the original.

6 MR. RUBY: No. That's my highlighting,
7 which somehow copied.

8 Okay. We'll get to that, though, because
9 that's going to be a question.

02:34 10 THE WITNESS: Okay.

11 BY MR. RUBY:

12 Q Okay. Ignoring the top e-mail, which is a
13 forwarding e-mail a year later -- we'll get to that
14 when we get to that year -- and just looking at your
02:34 15 e-mail of 2005, do you remember what prompted you to
16 send this e-mail?

17 A After this -- this was produced after the
18 claim, just trying to get an idea of the extent of
19 the damage. Just dropping in what we thought the
02:34 20 amounts were.

21 Q Okay. And the attachment here is a
22 Statement of Values?

23 A Right.

24 Q Okay. And you were forwarding to
02:34 25 Ms. McIntyre a Statement of Values with your e-mail,

02:34 1 right?

2 A I believe so, yes.

3 Q And you say in your e-mail: "I made some
4 guesses since Willis is out of the office." What
02:35 5 did you mean by that?

6 A With respect to property values, based
7 upon my knowledge of what -- what I thought, what
8 type of building was going up there, I took our
9 standard building values and to drop those numbers
02:35 10 in.

11 Q Did you take one of the Statement of
12 Values that you had received before this date from
13 Marsh and one of the ones that still had some blanks
14 in it and then put some numbers into those blanks?

02:35 15 A I mean, I would have assumed it would have
16 been the September 14th one, yes.

17 Q Okay. So you took the September 14th
18 statement that we've already looked at that had some
19 blanks in it --

02:35 20 A Correct.

21 Q -- and you filled in at least some of
22 those blanks? That's what you mean by "I made some
23 guesses"?

24 A Yes. And updated some values.

02:35 25 Q Okay. And then you sent it back to her,

02:35 1 and it looks like even though you sent it to her on
2 November 1st, you didn't change the date of the
3 statement; you kept the date of the statement as it
4 had come to you?

02:35 5 A It would appear I didn't update the date,
6 yes.

7 Q Okay. And Mr. Larson is right, I wrote in
8 "really 11/1/05" there, and I didn't mean that to
9 show in.

02:36 10 A Okay.

11 Q But would you agree with me that, in fact,
12 if you had updated the date on this statement when
13 you sent it to her, you would have put in the date
14 of your e-mail?

02:36 15 MR. LARSON: Objection; speculation.

16 THE WITNESS: I'm not sure of the exact
17 date I would have updated the schedule. It would
18 have been approximately around that date, though, I
19 would assume.

02:36 20 BY MR. RUBY:

21 Q Okay. And all I mean by that is just to
22 eliminate some confusion we all had in this case
23 earlier, that you sent her a statement with a date
24 on it, but you had actually put some information in
02:36 25 there that was not on that statement before, right?

02:36 1 A Correct. But once again, when you're
2 dealing with spreadsheets, as we noted earlier, you
3 had the 8/8 one, the same date is on it, a different
4 date on it. So when you're updating spreadsheets,
02:36 5 it's easy to overlook an item there.

6 Q Okay. Right. And I'm not saying it's a
7 big deal that the date wasn't changed. But just for
8 clarification, I think we've established that what
9 you sent Ms. McIntyre on November 1st, 2005, it
02:37 10 wasn't just the same statement she had sent you back
11 in November; you had made some changes to it and you
12 were sending it back to her, correct?

13 A Yes.

14 Q Okay.

02:37 15 All right. Now, looking at the statement
16 that's part of this exhibit, if we go to Yard 105,
17 we will see some values in columns that were
18 previously blank?

19 A Correct.

02:37 20 Q So I want to ask you about those values.
21 First of all, in the Building and
22 Improvements column, we now see a value of 750,000,
23 right?

24 A Yes.

02:37 25 Q Is that a number that you supplied?